Supreme Court of the United States

OCTOBER TERM, 1970

No. 6061

JACK L. MAYER,

Appellant,

—v.—

CITY OF CHICAGO

APPEAL FROM THE SUPREME COURT
OF THE STATE OF ILLINOIS

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

October 11, 1969	Defendant charged with "Disorderly Conduct" and "Interfering with a Police Officer".
January 12, 1970	Jury Trial begins in the Circuit Court of Cook County, Criminal Division.
January 14, 1970	Jury Trial ends, Finding of Guilty on both charges, Judgment entered on Verdicts. Defendant fined $250.00 on each charge.
February 3, 1970	Defendant's Post-Trial Motion for Judgment N.O.V., A New Trial, and Reduction of Sentence is denied. Among grounds urged were prejudicial misconduct of prosecutor and insufficiency of the evidence.
February 24, 1970	Defendant's Motion for, *inter alia*, a transcript without cost is denied "on the ground that defendant was found guilty of ordinance violations and that rule 607 of the Supreme Court applies only to felony cases." The finding of the Court that Defendant is indigent was inadvertently omitted from the order.
February 25, 1970	Notice of Appeal to Supreme Court of Illinois filed.
March 5, 1970	Praecipe filed in Circuit Court requesting that the record on appeal, including the transcript, be compiled.
March 24, 1970	Motion for, *inter alia*, a Transcript without cost, Affidavit, Brief in Support of Motion, and Supplemental Statement are filed with the Supreme Court of Illinois, by Justice Ward, and after hearing, the Motion and supporting documents are referred to the full Court for disposition.

DOCKET ENTRIES—(Continued)

September 18, 1970	Supreme Court of Illinois denies that portion of Appellant's Motion requesting a transcript without cost. That part of the Motion requesting waiver of filing fees is allowed.
October 2, 1970	Defendant's Motion for Completion of the Record on Appeal is granted and the Circuit Court enters of record the prior finding of February 24, 1970 that Defendant is indigent.

THE UNITED STATES OF AMERICA

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

STATE OF ILLINOIS)
) ss.
County of Cook)

Pleas, Proceedings and Judgment, before The Circuit Court of Cook County, Illinois, in the City of Chicago, in the County of Cook and State of Illinois, in the year of our Lord, one thousand nine hundred and seventy and the Independence of the United States, the one hundred and ninety fourth

Present: Honorable John A. Ouska, One of the judges of the court

EDWARD V. HANRAHAN,
State's Attorney

JOSEPH I. WOODS,
Sheriff

Attest: MATTHEW J. DANAHER, Clerk.

Be it Remembered, to wit: that on the 14th day of January 1970, the following among other proceedings were had in said court and entered of record therein, to-wit:

No. 69 MC1 605359 Quasi-Criminal

CITY OF CHICAGO, a municipal corporation,

v.

JACK L. MAYER

Now come the parties to this cause, also come twelve lawful jurors of a jury, who are duly elected, tried and sworn, to well and truly try the issues herein and a true

verdict render according to the evidence, and said jury, after hearing the verdict and the arguments of counsel, retire to consider of their verdict, and after due deliberation thereon had, they return into open Court the following verdict, to-wit:

> "WE, THE JURY, FIND THE DEFENDANT, JACK L. MAYER, GUILTY OF VIOLATING CHAPTER 11, SECTION 33 (INTERFERING WITH A POLICE OFFICER) OF THE MUNICIPAL CODE OF THE CITY OF CHICAGO, AS AMENDED."

This cause coming on for further proceedings herein, it is considered by the Court that the plaintiff have judgment on the verdict herein and that the plaintiff have and recover of and from the defendant, JACK L. MAYER, the damages of the plaintiff amounting to the sum of TWO HUNDRED FIFTY and no/100 DOLLARS ($250.00) in form as aforesaid assessed and that execution issue therefor.

Stay of mittimus to March 13, 1970.

THE UNITED STATES OF AMERICA

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

STATE OF ILLINOIS)
) ss.
County of Cook)

Pleas, Proceedings and Judgment, before The Circuit Court of Cook County, Illinois, in the City of Chicago, in the County of Cook and State of Illinois, in the year of our Lord, one thousand nine hundred and seventy and the Independence of the United States, the one hundred and ninety fourth

Present: Honorable John A. Ouska, One of the judges of the court

EDWARD V. HANRAHAN,
State's Attorney

JOSEPH I. WOODS,
Sheriff

Attest: MATTHEW J. DANAHER, Clerk.

Be it Remembered, to wit: that on January 14, 1970, the following among other proceedings were had in said court and entered of record therein, to-wit:

No. 69 MC1 605358 Quasi-Criminal

CITY OF CHICAGO, a municipal corporation,

v.

JACK L. MAYER

Now come the parties to this cause, also come twelve lawful jurors of a jury, who are duly elected, tried and sworn, to well and truly try the issues herein and a true

verdict render according to the evidence, and said jury, after hearing the verdict and the arguments of counsel, retire to consider of their verdict, and after due deliberation thereon had, they return into open Court the following verdict, to-wit:

> "WE, THE JURY, FIND THE DEFENDANT, JACK L. MAYER, GUILTY OF VIOLATING CHAPTER 193, SECTION 1 (A) (DISORDERLY CONDUCT) OF THE MUNICIPAL CODE OF CHICAGO".

This cause coming on for further proceedings herein, it is considered by the Court that the plaintiff have judgment on the verdict herein and that the plaintiff have and recover of and from the defendant, JACK L. MAYER, the damages of the plaintiff amounting to the sum of TWO HUNDRED FIFTY and no/100 DOLLARS ($250.00) in form as aforesaid assessed and that execution issue therefor.

It is ordered that the mittimus be and the same is hereby ordered stayed to March 13, 1970.

(Court Date)

... ANAHER, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

QUASI-CRIMINAL

THE CIRCUIT COURT OF COOK COUNTY

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

CITY OF CHICAGO,
A MUNICIPAL CORPORATION, COMPLAINT

No.

v.

Jack L. MAYER
Defendant

James T. Breckenridge
(Complainant's Name Printed or Typed) complainant, now appears before the Circuit Court of Cook County and states that Jack L. Mayer (defendant) has, on or about 11 Oct 1969 (date) at Madison & Clark (place of offense) Chicago, Cook County, Illinois, committed the offense of Interfering (offense) in that he

11-33 ☒ Did knowingly resist, obstruct, or interfere with one known to be a police officer in the performance of his duties.

192-27 ☐ Did own a dog at _____ in the City of Chicago and did unlawfully fail to procure a license for said dog.

192-4 ☐ Being a minor, _____ years of age, was intoxicated or did purchase, offer to purchase, or unlawfully obtain for his personal use an intoxicating liquor.

192-1 ☐ Did keep or maintain, patronize or frequent or was an inmate of a house of ill fame or assignation or place for the practice of fornication, prostitution or lewdness.

192-5 ☐ Did solicit to prostitution upon the streets of Chicago or other public places, one _____ _____ for the price of $ _____ at, to-wit: _____

192-6 ☐ Being a habitual drunkard, or person known to be a prostitute or one who aids or abets prostitution or person previously convicted of a felony or prostitution and who did assemble with persons of the fore-going classes on the public way or in a public place or did frequent, loiter or loaf in a premises where intoxicating liquors are sold.

192-29 ☐ Did discharge a gun, pistol or other fire-arm in the city.

In violation of Chapter _____ Section _____ of the Municipal Code of The City of Chicago.

James T. Breckenridge
(Complainant's Signature)

2nd DISTRICT
(Complainant's Address) (Telephone No.)

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

James T. Breckenridge
(Complainant's Name Printed or Typed)

being first duly sworn, on _____ oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

James T. Breckenridge
(Complainant's Signature)

Subscribed and sworn to me before me _____, 19__.

_____
(Judge or Clerk)

ORDER FOR WARRANT

I have examined the above complaint and the person presenting the same and have heard evidence thereon and am satisfied that there is probable cause for filing same. Leave is given to file said complaint. Warrant to issue.

Bail fixed at $_____

JUDGE

ORDER FOR LEAVE TO FILE COMPLAINT (ARREST WITHOUT WARRANT)

I have examined the above complaint. Leave is given to file said complaint.

Bail fixed at $ 250.00

JUDGE John A. Swarthout

BEST AVAILABLE COPY

(Court Branch) (Court Date)

MATTHEW J. DANAHER, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

(MMC-2)

QUASI-CRIMINAL

STATE OF ILLINOIS } ss
COUNTY OF COOK }

THE CIRCUIT COURT OF COOK COUNTY

CITY OF CHICAGO
A MUNICIPAL CORPORATION,
PLAINTIFF

COMPLAINT

No.

v.

Jack L. MAYER
Defendant

James T. Breckenridge
(Complainant's Name Printed or Typed) complainant, now appears before

the Circuit Court of Cook County and states that Jack L. MAYER
(defendant)

has, on or about 11 Oct 1969 (date) at MADISON & Clark (place of offense)

Chicago, Cook County, Illinois

Committed the offense of **Disorderly Conduct** in that he knowingly

☒ a) Did any act in such unreasonable manner as to provoke, make or aid in making a breach of peace.

☐ b) Did or made any unreasonable or offensive act, utterance, gesture or display which, under the circumstances, creates a clear and present danger of a breach of peace or imminent threat of violence.

☐ d) Failed to obey a lawful order of dispersal by a person known by him to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or alarm.

☐ e) Assembled with three or more persons for the purpose of using force or violence to disturb the public peace.

☐ f) Was begging or soliciting funds on the public ways.

☐ g) Appeared in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

☐ h) Carried in a threatening or menacing manner, without authority of law, any pistol, revolver, dagger, razor, dangerous knife, stiletto, knuckles, slingshot, an object containing noxious or deleterious liquid, gas or substance or other dangerous weapon or concealed said weapon on or about the person or vehicle.

In violation of Chapter 193 Section 1 4 (Subsection) of The Municipal Code of The City of Chicago.

James T. Breckenridge
(Complainant's Signature)

2nd DISTRICT
(Complainant's Address) (Telephone No.)

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

JAMES T. BRECKENRIDGE
Complainant's Name Printed or Typed

being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true:

James T. Breckenridge
Complainant's Signature

Subscribed and sworn to before me _____, 19____.

_____
Judge or Clerk

ORDER FOR WARRANT

I have examined the above complaint and the person presenting the same and have heard evidence thereon and am satisfied that there is probable cause for filing same. Leave is given to file said complaint. Warrant to issue.

Bail fixed at $_____

JUDGE _____

ORDER FOR LEAVE TO FILE COMPLAINT (ARREST WITHOUT WARRANT)

I have examined the above complaint. Leave is given to file said complaint.

Bail fixed at $ 250.00

JUDGE Allan A. Charles

BE IT REMEMBERED, that afterwards, to wit: on the 11th day of October, 1969, the following among other proceedings were had and entered of record in said court which proceedings were and are in words and figures following to-wit:

PRESENT HONORABLE JOHN A. OUSKA, one of the judges of the court

EDWARD V. HANRAHAN,
States Attorney

JOSEPH I. WOODS,
Sheriff

MATTHEW J. DANAHER,
Clerk

No. 69 MC1 605359 Quasi-Criminal

CITY OF CHICAGO, a municipal corporation,

v.

JACK L. MAYER

DRAFT ORDER

CCC-2-E ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MUNICIPAL (COUNTY) (MUNICIPAL) DEPARTMENT FIRST DISTRICT (DIVISION) (DISTRICT)

☒ The People of the State of Illinois

☐ The City of Chicago, a Municipal Corporation

v.

JACK L. MAYER
Defendant

Court Complaint No. 605359

ENTERED IN SPECIAL ORDER BOOK 53 PAGE 219

BOND ORDER

ORDER

The Defendant Jack L Mayer (Name)

whose address is 334 East 25th pl (Number and Street) New York City (City and State)

having been arrested on the charge of 193-1-A (Offense)

IT IS HEREBY ORDERED that bail is set at $ [illegible]

IT IS FURTHER ORDERED that said defendant having neglected and failed to give bail be held by the Sheriff of Cook County, Illinois and that the Sheriff safely keep him until said defendant give bail as required, or until his court appearance at 2600 South California (Location)

Chicago, Illinois before Branch 47 in Room 1

on 10/23/69 (Date) at 2:00 (Time) ☐ AM ☒ PM

NOV 11 1969, 19

ENTER:

Judge

[illegible], CLERK OF THE CIRCUIT COURT OF COOK COUNTY

572

-5a-

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IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Jan. 30, 1970, Matthew J. Danaher, Clerk of Court]

THE CITY OF CHICAGO, PLAINTIFF,

v.

JACK L. MAYER, DEFENDANT

POST-TRIAL MOTION

Defendant Jack Mayer was charged by the City of Chicago with violation of two city ordinances: "disorderly conduct," in that he "knowingly . . . did any act in such unreasonable manner as to provoke, make or aid in making a breach of peace," and interfering with a police officer, in that he "did knowingly resist, obstruct or interfere with one known to be a police officer in the performance of his duties." (*C.f.*, Municipal Code of Chicago, Ch. 193, Sec. 1(a); Ch. 11, Sec. 11-33.)

A jury trial was held before the Honorable Judge Ouska on January 12 through January 14 and the defendant was found guilty on both counts. Defendant now makes a timely motion under Section 68.2 of the Civil Practice Act seeking a judgment *non obstante veredico* or, in the alternative, a new trial. Defendant also seeks to set aside one of his fines. This motion shall stand for earlier oral motions made for a directed verdict.

A. *The evidence in the case does not support the verdict.*

Based upon the following undisputed and uncontroverted facts in the record, this court should enter a judgment notwithstanding the verdict.

1. The defendant came to Chicago on request as a member of the Medical Committee for Human Rights, in order to provide a medical presence in case of illness or injury.

2. Defendant did not participate in the march itself, but was an onlooker.

3. At the intersection of Madison and La Salle Streets the defendant came upon an apparently injured man lying on his back in the middle of the street.

4. Defendant had never seen this man before.

5. The line of march had already broken and proceeded east down Madison Street. There were between 60-100 police in the immediate area of the apparently injured victim, some of whom had demonstrators in their custody, but the bulk of whom were stationary.

6. Defendant, a third-year medical student from New York University, performed a brief neurological examination of the victim, ascertaining that he was alert, had been struck in the back, could not move his toes and legs and had no sensation in them, and had no deep pain reflexes. At this point, the examination was interrupted by the police. Based upon this information, defendant diagnosed a possible spinal injury to this patient.

7. A highly experienced and knowledgeable doctor testified as an expert witness that defendant's diagnosis was medically correct, and that based upon what the defendant knew at the time, if the victim were improperly moved, further severe spinal injury could reasonably result which might be permanent and completely disabling.

8. The defendant in an emphatic voice either (a) told the police not to move the victim (one police version), or (b) told police not to move the victim without an orthopedic stretcher because he had a "possible spine injury" (the defense version). He also said: "They (the police) don't care about him (the victim)."

9. When the police started to (a) lift the victim to the sidewalk, three on each side (one police version), or (b) drag the victim away, one policeman holding him by each limb (defense version),

10. Defendant, kneeling by victim's left shoulder, either (a) placed on hand on the victim's stomach, "pushing" an officer glancingly with the other (police version), or (b) placed both hands on the stomach of the victim in an effort to keep the injured back stable (defense version).

11. Defendant so acted solely to protect the victim from possible severe further harm, including permanent and total paralysis, which he and the expert witness thought reasonably might have resulted from the police method of carrying the injured man. The doctor testified as an expert witness as to these dangers and gave his opinion that the police method of transportation was medically unsafe and reasonably might have caused severe harm.

12. An official police training bulletin sent to and supposed to be followed by every police officer, introduced into evidence at trial, stated: "*Never, never, never* move an injured victim unless absolutely necessary." Officers are subject to discipline for violating these official bulletins. It was apparent to the officers that the victim was injured.

13. The purported reason for moving the victim was either (a) to clear the streets for traffic, or (b) so a column of police could march down the street (both police versions). There were numerous police in the immediate area (60-100—police estimate) and there were some demonstrators clustered in groups of four on various street corners. The mass of the march, estimated at some 150-200 persons, was some distance away, moving away from the scene. There was no disturbance at this time.

From these undisputed facts, the jury could not reasonably find against, and this court should enter a judgment notwithstanding the verdict for, defendant Jack Mayer. There is insufficient evidence to convict defendant on either charge. The evidence is so insubstantial that due process of law requires judgment for the defense. *Thompson* v. *City of Louisville*, 362 U.S. 199 (1960).

B. *Neither ordinance was intended to cover such beneficially-motivated, non-violent conduct.*

This court should enter judgment for the defendant because the facts show that, in attempting to hold the victim's back immobile, he acted with intent to prevent greater harm to the victim, his patient, and with intent to assist the police rather than hinder them in the proper performance of their duties. Neither the "disorderly conduct" ordinance nor the "interfering" ordinance was intended to reach such conduct. The "disorderly conduct" ordinance is aimed at safeguarding the general peace of the community and the interests of other persons in being free from unreasonable disruptions in their lives or in the pursuit of their legitimate activities. The "interfering" ordinance is aimed at safeguarding policemen and police operations and making them efficient. Neither ordinance was intended to be a "catch-all" encompassing the reasonable activities of citizens in their interactions with the police. Thus, although it "interferes" with police conduct, arguing or "remonstrating with an officer in behalf of another is not an offense." See 39 Am. Jur. "Obstructing Justice", § 10. Similarly, the "interfering" ordinance was not intended to encompass non-violent interferences for beneficial purposes. The ordinance does not make it an offense to stop a police officer from unknowingly entering a room to arrest someone waiting to shoot the officer. Neither is it an offense to hinder an officer from unwittingly opening a booby-trapped call box, or for a mother to attempt to stop an officer from unknowingly backing his vehicle over her baby who has crawled out into the street. Furthermore, the disorderly conduct ordinance only proscribes "unreasonable" conduct leading to a "breach of peace"; defendant's conduct here was neither "unreasonable" nor did it "provoke, make or aid in making a breach of peace" as the City Council intended these words to be construed.

C. *This court should enter judgment for the defendant because the requisite elements of the charge were not proven.*

Both ordinances require that defendant's conduct be "knowing." "Knowing" is defined in the Illinois Criminal Code as "when [defendant] is consciously aware that his conduct is of such nature [as is proscribed by the ordinances]." (See 38 Ill. Rev. Stat., § 4-5.) And in *The People* v. *Raby*, 40 Ill. 2d 392, 395 (1968), in reference to the state "disorderly conduct" statute, Justice Schaefer said:

> "The word 'knowingly' describes a consciousness and deliberation which negatives accident or mistake."

Defendant Mayer was not "consciously aware" that his conduct was obstructive or interfering rather than helpful and assisting. Defendant's conduct was aimed at preventing grave injuries to the victim and preventing possible liability on the part of the officers. It is an element of the "interfering" ordinance that the officers' conduct must be "official" or "authorized." The "knowing" requirement applies to this element as to all the others. The apparently willful maltreatment of victims in their custody by policemen is neither "official" nor "authorized" conduct. Defendant therefore could not have been and was not "consciously aware" that his conduct was doing anything other than preventing greater harm to another and helping the policemen to avoid discipline, and possible civil and criminal liability. Defendant, a highly-trained physician, was greatly disturbed at the callous and illegal conduct of the officers, and had a medical duty to act non-violently for the benefit of the injured victim. His hindrance of the police, such as it was, was not "knowing" within the meaning of the ordinance, and the jury could not properly so have found.

D. *It was error to refuse defendant's instructions on necessity.*

Defendant tendered to the court instructions, which were refused, setting out the defense of "necessity" in the words of the Illinois statute:

> "Conduct which would otherwise be an offense is justified by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct." (38 Ill. Rev. Stat., § 7-13.)

The "Committee Comments" to this section of the Criminal Code make clear that its intended application was not limited to offenses covered by that Code; indeed one of the suggested applications is to the "violation of speed limit in pursuit of criminal" and another is for "a druggist dispensing a drug without the requisite prescription to alleviate distress in an emergency."

This statute only codifies and enunciates as a policy of the State of Illinois the long-standing common law defense of necessity. As the committee states, "Necessity as a justification for crime has long been known to the law." The most famous instances of its use, of course, involved situations where one of a group in common distress was murdered to preserve the lives of the others. See *United States* v. *Holmes*, 26 Fed. Cases 360, No. 15,383 (C.C. Pa. 1842); *Regina* v. *Dudley and Stevens*, 14 Q.B.D. 273, 15 Cox C.C. 624 (1884). See also 22 C.J.S., Criminal Law, § 49, pp. 185-186.

The necessity doctrine was applied and discussed by the U.S. Supreme Court in *United States* v. *The Diana*, 7 Wall 354, 19 L. Ed. 165 (1868), a case quite similar to that presented here. In that case a schooner, in violation of a federal statute, entered an area that had been declared blockaded. The government sued for confisca-

tion under the blockade law and the defense was that the entry was necessary because of the boat's condition of distress. The Supreme Court accepted the applicability of the common law necessity defense in that statutory action on the basis of evidence showing that the rigging was broken and needed repair, but the court found as a fact that the skipper intended to "trade with the enemy" in violation of the blockade law, and also that the injuries were "not such as would endanger the safety of the vessel." The Supreme Court indicated that the defense would have prevailed if the ship had been out of provisions or was leaking and had no alternative but to violate the blockade. *The Diana* is direct authority for the use of the necessity defense in this case.

It is the law of this state that any valid defense may be raised as a defense to an ordinance violation unless otherwise specifically indicated. See 10 Ill. Law & Prac., "Cities, Villages," § 1194; 62 C.J.S., "Municipal Corporations," § 319. Nothing in either the disorderly conduct or the interfering ordinances here suggests an intent to do away with the necessity defense, no more than the defense of self-defense. Would anyone suggest that it is disorderly conduct under the city's ordinance to defend oneself from physical attack from a stranger? Or is it "interfering" to interrupt an officer in the ways described under B above? Just as the ordinances include self-defense by their silence, so do they include the necessity defense. It would be a frightening world otherwise.

Self-defense and the necessity defense expressly apply to the "interfering" and "disorderly" sections of the Illinois Criminal Code, *upon which the city's ordinances in this case are based* (see 38 Ill. Rev. Stat., §§ 31-1, 26-1), and § 7-13 expresses a strong state policy in favor of the general utility of the necessity defense in any penal proceeding in this state. Labelling this prosecution "quasi-criminal" should not blind the court to essences. It was a matter of whim or chance that this was not a

state prosecution under the identical state statutes. Defendant here faces a penal fine which may be well in excess of his ability to pay, and the ordinances which he is charges with violating are directed towards personal conduct of the sort normally associated with criminal actions. If he cannot pay, he may be imprisoned for up to six months. 24 Ill. Rev. Stat., § 1-2-9. If these are not penal sanctions, nothing ever is.

It is basic that municipal ordinances should not in- N.E.2d —— (1966). In the *Town of Cicero*, case, *Weilander*, 35 Ill. App. 2d 456, 183 N.E.2d 40 (1962); *U.S. Brewing* v. *Alsip*, 81 Ill. App. 2d 235, 243, —— N.E.2d —— (1966). In the *Town of Cicero*, case, *supra* at 467, the Appellate Court said:

> "Municipal authorities cannot under a general grant of power adopt or pass ordinances which infringe on the spirit of the State law or which are repugnant to the policy of the State as declared by its general regulations, but the police regulation of a municipality may differ from those of the State on the same subject if they are not inconsistent therewith."

There is nothing in the Municipal Code of 1961 or these ordinances themselves to suggest that the overriding policy expressed in 38 Ill. Rev. Stat. § 7-13 was meant to be infringed (see 24 Ill. Rev. Stat., §§ 11-5-2, 11-5-3, 11-1-1). This court should not endanger the validity of these ordinances by bringing them into conflict with the overriding state statutory policy.

Neither should this court be troubled with the fear that permitting the defense of necessity in this case would open the door to untold defenses in traffic, pollution or similar cases arising under other municipal ordinances, the result of which would be a frustration of their purposes. These other ordinances might well manifest an intention that such a defense as necessity is inapplicable, or that under some circumstances absolute liability ob-

tains. Each ordinance stands on its own policies and purposes. But absolute liability, or an absence of normal defenses, was not the intended result of the ordinances under which defendant was charged. The purposes of the ordinances are not frustrated, but are furthered by the inclusion of the necessity defense. This conclusion is the more obvious when it is considered that the state "disorderly conduct" and "interfering" statutes, upon which the city's present ordinances were modeled, expressly provide for the necessity defense, and no one questions but that their purposes are furthered and amplified, rather than frustrated, by this inclusion. The absurdity of the city's position is further suggested by the fact that the necessity defense is of unquestioned validity in a state prosecution, where the consequences are more severe and the state's interest in protecting against the various harms is greater. Surely the defense must also obtain where the consequences and the government's interest are less.

Furthermore, while with a pollution or traffic ordinance dispensing with the defense of necessity, a reasonable connection may exist between the exercise of proper police powers and purposes and the method applied for regulating or enforcing those purposes, no such reasonable connection exists in this case. To dispense with the defense of necessity here would violate due process of law. See *Goldblatt* v. *Hempstead*, 369 U.S. 590 (1962).

E. *If necessity is no defense and defendant's conduct was intended to be included within the scope of the ordinances then the ordinances are over-broad and unconstitutional.*

Statutes and ordinances should be construed where possible to be valid and constitutional. See *Du Bois* v. *Gibbons*, 2 Ill. 2d 392, 410 (1954). The constitutional and statutory conflict problems in this case could be avoided by following the natural construction of the law, which would permit the defense of necessity or indicate

that conduct such as defendant engaged in here is not within the scope of these ordinances. If, however, the court should conclude to the contrary, then it must squarely face the vague and dangerously broad unconstitutional reach of the monsters it has created. Even innocent "interferences" and "disorderly conduct," or conduct compelled by beneficial purposes of all sorts, would be brought within their prohibitions. Judge Will has already indicated that such a construction would render these ordinances unconstitutional. See *Landry* v. *Daley*, 280 F. Supp. 968, 973 (N.D. Ill. 1968). A women screaming to stop a policeman from driving a vehicle over her child would be guilty of "disorderly conduct"; the Good Samaritan stopping a policeman from getting shot by the concealed killer would be guilty of "interfering"; everyday beneficial conduct by untold millions of citizens would suddenly become violations of the law. It is clear that defendant's participation in this march, such as it was, was protected by the First Amendment. See *Gregory* v. *City of Chicago*, —— U.S. ——, 89 Sup. Ct. 946, 947 (1969). His treating the injured man was the act of a Good Samaritan. To convict and penalize him for his conduct under such shotgun ordinances violates due process of law.

F. *It was error to refuse defendant's instruction on the meaning of "breach of peace."*

The defense tendered to the court an instruction on "breach of peace," which was refused. None other was substituted and no attempt was made by the court or prosecutor to supply an alternative. Without such explication, this phrase is unconstitutionally vague and meaningless. While it has been held that the inclusion of such a phrase in a statute may be permitted without violating the Constitution (see *The People* v. *Raby*, 40 Ill. 2d 392 (1968)), this defendant was denied his right to due process of law by the failure to instruct the jury on the meaning of "breach of peace" as reflected by the

facts in evidence. It is not a violation of the Constitution to talk or argue with an officer, although this might be considered to "breach the peace." Remitting the definition of this phrase to the jury's unbridled discretion, unguided by standards or carefully drawn instructions based upon the facts of the case, is a violation of the specificity requirement in due process, subjects defendants to wholly undefined and arbitrary criminal and "quasi-criminal" liabilities, and permits the jury to convict for constitutionally protected acts. See *Gregory* v. *City of Chicago*, —— U.S. ——, 89 Sup. Ct. 946 (1969); *Stromberg* v. *California*, 283 U.S. 359 (1931); *Shuttlesworth* v. *City of Burmingham*, 382 U.S. 87, 90 (1965); *Edwards* v. *South Carolina*, 372 U.S. 229, 237-238 (1963); *NAACP* v. *Button*, 371 U.S. 415, 433, 475 (1963).

G. *Defendant was denied a fair trial.*

The conduct of the trial, especially the conduct of the prosecution; denied the defendant his constitutional right to a fair trial. The prosecutor put on as his first witness someone whose testimony consisted solely of background, duplicative of that which could have been and was given by the other officers who testified. The sole apparent function of this testimony was to bring two absolutely irrelevant and highly prejudicial facts before the jury: the first fact was that Richard Elrod was injured at about the same time during the same demonstration; the second fact was that the marchers, of whom defendant was not even one, were chanting apparently pro-North VietNamese slogans such as "Ho Chi Mihn." The facts about Richard Elrod's injury and his connection to the demonstration have been spread over the newspapers of the City of Chicago with some consistency since the 11th of October, 1969. The deliberate, irrelevant mentioning of his name before the jury could do nothing but hang this defendant regardless of the facts of his case. And the stressing of the "traiterous" and "anti-American" chant made a political trial out of an otherwise neutral state of facts. Although these comments were stricken

from the record, they were never stricken from the jury's mind. The apparent bad faith of the prosecutor in eliciting these questions compells reversal and the grant of a new trial. *C.f., Giles* v. *Maryland*, 386 U.S. 66 (1967); *Brady* v. *Maryland*, 373 U.S. 83 (1963) (use of perjured testimony).

Moreover, the prosecutor relied almost exclusively in his closing arguments to the jury on facts not fairly inferable from the evidence or within the proper scope of argument. These "facts" related to hypothetical violent and destructive acts by some unknown demonstrators, and to the defendant's alleged involvement in a conspiracy to disrupt Chicago. Nothing in the record even approached supporting such gross and prejudicial fancies. The bad faith of the prosecutor and his highly-prejudicial and improper argument, combined with the grossly prejudicial infection of the trial by the mention of Elrod and the political chants, require in the interests of justice and due process of law that defendant be given a fair trial. See *Paulsen* v. *Gateway Transportation Co., Inc.*, —— Ill. App. 2d ——, No. 69-41, Second District, Nov. 4, 1969 (prejudicial conduct of plaintiff's counsel in closing argument denied defendant a fair trial); *Mooney* v. *Holohan*, 294 U.S. 103, 112 (1935).

H. *It was error to refuse defendant's instructions on a reasonable doubt.*

The court refused defendant's tendered instructions based upon a reasonable doubt burden of proof. Such a standard must apply for prosecutions under these ordinances. They are penal in nature. They seek to impose sanctions for certain kinds of personal, public conduct of the kind normally denominated "criminal." Changing the sign on the door does not make a jail any less a jail. There are here no compensating interests or policies compelling dilution of the ordinary guarantees before penal sanctions are imposed. See *In re Gault*, 387 U.S. 1 (1967); *Duncan* v. *Louisiana*, 391 U.S. 145 (1968); *Speiser* v. *Randall*, 357 U.S. 513, 524-525 (1958).

I. *It was error to sentence defendant on both charges arising out of the same conduct.*

Defendant was fined $250 on each charge, but both charges resulted from the same identical act—placing his hand on the victim's stomach. It is axiomatic that a court cannot impose double penalties for the same conduct. See *City of Chicago* v. *Hill*, 40 Ill. 2d 130, 136 (1968); *People* v. *Raby*, 40 Ill. 2d 392, 404 (1968). Therefore, defendant's fine for interfering or disorderly conduct must be set aside.

Whereupon defendant requests this court to enter a judgment in his favor notwithstanding the verdict or, in the alternative, the grant of a new trial on these charges. Defendant also requests that his fine be reduced from $500 to $250 to avoid double punishment.

Defendant,

By /s/ Henry F. Field
HENRY F. FIELD
231 South La Salle Street
Chicago, Illinois 60604
STate 2-0600
His Attorney

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Jan. 30, 1970, Matthew J. Danaher, Clerk of Court]

THE CITY OF CHICAGO, PLAINTIFF,

v.

JACK L. MAYER, DEFENDANT

ORDER

This matter coming on upon the motion of defendant by his attorney for a hearing and decision on a post-trial motion for judgment *non obstante veredicto* or, in the alternative, a new trial, and also for the setting aside of part of one of the two fines imposed, it is ordered that:

1. judgment is hereby entered for the defendant notwithstanding the verdict,
2. the defendant is granted a new trial, and
3. the fine of $250 as to the offense of _____ is set aside.

Entered this —— day of _____, 1970.

By _____
HONORABLE JOHN OUSKA

Denied.

Sheet No. _____

Line No. _____

No. 69 MC 605358

CITY OF CHICAGO

vs.

JACK MAYER, DEFENDANT

Order of 2-3-70
Date

Post trial motion for judgment n.o.v., and for a new trial, and for reducing fines, is hereby denied. Existing bond is to stand as the appeal bond.

/s/ John A. Ouska
Judge

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Feb. 18, 1970, Matthew J. Danaher, Clerk of Court]

THE CITY OF CHICAGO, PLAINTIFF,

v.

JACK L. MAYER, DEFENDANT

MOTION FOR LEAVE TO PROCEED AS A POOR PERSON

Defendant Jack Mayer moves this court for leave to proceed as a poor person under Illinois Supreme Court Rules 298 and 607 and for the appointment of counsel.

Defendant states that the facts contained in the attached affidavit are true to the best of his knowledge and belief and requests that his attorney, Henry Field, be appointed because of his familiarity with the proceedings.

By /s/ Jack L. Mayer
JACK L. MAYER

SUBSCRIBED AND SWORN TO
before me this 3rd day
of February, 1970.
At New York, N.Y.

/s/ Roger F. Rose
Notary Public

ROGER F. ROSE
Notary Public, State of New York
No. 31-8642010
Qualified in New York County
Commission Expires March 30, 1970

Denied
2-24-70

/s/ Judge Horan

1) I, the undersigned, am a medical student at the New York University School of Medicine, and I have no other means of subsistence other than my parents who pay for my tuition and a New York State Regents Incentive Scholarship.

2) In the year preceding this application my income was $0.00.

3) I have no source of income expected in the near future.

4) I have no real or personal property.

5) No other application for leave to proceed as a poor person has been filed by me during the year.

6) I am unable to pay the costs of the suit and to do so would cause great hardship to myself and my parents.

7) I have a good claim for defense.

By /s/ Jack L. Mayer
JACK L. MAYER

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Feb. 18, 1970, Matthew J. Danaher, Clerk of Court]

Subscribed and Sworn to
before me this 3rd day
of February, 1970.
At New York, N.Y.

/s/ Roger F. Rose
Notary Public

ROGER F. ROSE
Notary Public, State of New York
No. 31-8642010
Qualified in New York County
Commission Expires March 30, 1970

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Feb. 18, 1970, Matthew J. Danaher, Clerk of Court]

THE CITY OF CHICAGO, PLAINTIFF,

v.

JACK L. MAYER, DEFENDANT

ORDER

It is ordered that defendant Jack Mayer be allowed to proceed as a poor person without payment of costs.

It is further ordered that the court reporter prepare such portion of the trial transcript as the parties may designate without cost to the defendant.

It is further ordered that Henry Field be appointed to represent the defendant in this proceeding.

Entered this —— day of ————————, 1970.

_____
Judge

Dated:

Sheet No. _____

Line No. _____

No. 69 MC 605359

CITY OF CHICAGO

vs.

JACK MAYER, DEFENDANT

Order of Feb. 24, 1970
Date

Ordered that the motion of the defendant for leave to proceed as a poor person be and it is hereby denied on the grounds that defendant was found guilty of ordinance violations and that rule 607 of the Supreme Court applies to felony cases.

/s/ Charles P. Horan
Judge

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Feb. 26, 1970, Matthew J. Danaher, Clerk of Court]

THE CITY OF CHICAGO, PLAINTIFF,

v.

JACK L. MAYER, DEFENDANT

NOTICE OF APPEAL

An appeal is taken from the order of judgment described below:

1. Court to which appeal is taken: Supreme Court of Illinois.

2. Name of appellant and address to which notices shall be sent: Jack L. Mayer, c/o Henry F. Field, 231 South La Salle Street, Chicago, Illinois 60604.

3. Name and address of appellant's attorney on appeal: Henry F. Field, 231 South La Salle Street, Chicago, Illinois 60604.

If appellant is indigent and has no attorney, does he want one appointed? Appellant asks appointment of Mr. Henry F. Field.

4. Date of judgment or order: February 3, 1970.

5. Offense of which convicted: interference with police officer, disorderly conduct.

6. Sentence: $500 fine.

7. If appeal is not from a conviction, nature of order appealed from: post-trial motion, conviction.

/s/ Henry Field
HENRY F. FIELD
Attorney for Defendant

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

JACK L. MAYER, DEFENDANT-APPELLANT

v.

THE CITY OF CHICAGO, PLAINTIFF-APPELLEE

MOTION FOR COMPLETION OF THE RECORD ON APPEAL UNDER RULE 329

1. On January 14, 1970, Defendant-Appellant was convicted by jury in the Municipal Court of Cook County, J. Ouska presiding, of disorderly conduct and interfering with a police officer.

2. On January 28, 1970, Defendant-Appellant's counsel, Henry Field, was informed by the court reporter's office that the cost of the trial transcript covering only the testimony would be approximately $300.

3. On February 3, 1970, Defendant-Appellant moved in the Circuit Court for leave to proceed as a poor person, for appointment of counsel, and for a transcript for appeal. After a hearing before Acting Chief Judge Horan in Room 1301, Civic Center, this motion was denied. The court indicated that a finding of indigency was proper, based upon the affidavit, but ruled that he lacked power to order the relief sought because Supreme Court Rule 607(a) applies only to "felonies" and Defendant-Appellant's case was not a "felony." On this basis the following order of court was entered on the "half sheet":

> "That motion of defendant to proceed as a poor person is hereby denied."

5. Notice of appeal was filed on February 25, 1970.

6. On March 24, 1970, Defendant-Appellant's motion

for leave to proceed as a poor person, for the appointment of counsel and for a transcript was heard by Associate Judge Ward of the Illinois Supreme Court, who referred the matter to the entire Court. Defendant-Appellant filed a written brief with the Court, arguing the unconstitutionality of Rule 607 as written and containing the statement, *inter alia*, that:

> "Following conviction, appellant petitioned the Circuit Court through Acting Chief Judge Horan, for a transcript, for the appointment of counsel, and for waiver of fees. This petition was denied, upon the sole ground that the Supreme Court Rules do not allow an indigent to obtain a transcript unless his conviction is for a felony. (See especially Rule 607 (a).)"

7. On September 18, 1970, the Illinois Supreme Court made an announcement that in this case:

> "The portion of the motion by appellant that he be furnished a transcript of proceedings without cost and for appointment of counsel was denied. The part of the motion for waiver of filing fees was allowed."

8. Defendant-Appellant now moves this court for the entry of an order, attached herewith, completing and clarifying the record in this case insofar as his status as a poor person is concerned.

Whereas, Defendant-Appellant Jack L. Mayer moves this court for a finding of indigency in order to complete the record for appeal.

This motion is filed under Supreme Court Rule 329.

/s/ Henry F. Field

HENRY F. FIELD
231 South La Salle Street
Chicago, Illinois 60604
STate 2-0600
Attorney for Defendant-Appellant

AFFIDAVIT

I hereby affirm that the statements in the herein-presented motions are true to the best of my knowledge and belief.

/s/ Henry F. Field
HENRY F. FIELD

SUBSCRIBED AND SWORN TO
before me this 25th day
of September, 1970.

/s/ Bertha M. Veramonte
Notary Public

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

JACK L. MAYER, DEFENDANT-APPELLANT

v.

THE CITY OF CHICAGO, PLAINTIFF-APPELLEE

NOTICE OF MOTION

To: Corporation Counsel
605 City Hall
Chicago, Illinois 60602

Attention: Mr. Larry Chambers

Defendant-Appellant, by his counsel, will present the attached motion before the Chief Judge of the Circuit Court, or such Judge as shall be hearing motions in his stead, at 10:00 A.M. on Thursday, October 1, 1970 in the Civic Center.

/s/ Henry F. Field
HENRY F. FIELD
231 South La Salle Street
Chicago, Illinois 60604
STate 2-0600
Attorney for Defendant-
Appellant

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

JACK L. MAYER, DEFENDANT-APPELLANT

v.

THE CITY OF CHICAGO, PLAINTIFF-APPELLEE

AFFIDAVIT OF SERVICE

I served a copy of the attached motion, order and notice upon the Corporation Counsel, Attention Larry Chambers, by prepaid mail on Friday, September 25, 1970 at 5:00 P.M.

/s/ Henry F. Field
HENRY F. FIELD

SUBSCRIBED AND SWORN TO
before me this 25th day
of September, 1970.

/s/ Eleanor A. Alekna
Notary Public

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 605358, 605359

[Filed, Municipal Court of Chicago, First Municipal District of Circuit Court, Cook County, Oct. 2, 1970
Matthew J. Danaher, Clerk of Court]

JACK L. MAYER, DEFENDANT-APPELLANT

v.

THE CITY OF CHICAGO, PLAINTIFF-APPELLEE

ORDER

This matter coming on upon the motion of appellant for a free transcript, and the appointment of counsel for appeal, and

being advised in the premises by argument of counsel for both sides, of the existence and constitutionality of Illinois Supreme Court Rule 607, providing free transcripts, the appointment of counsel and the waiver of filing fees for appeals by indigents from felony convictions,

this court finds:

(a) appellant Jack L. Mayer is an indigent for the purposes of appeal,

(b) because said Rule does not apply to misdemeanor or "quasi-criminal" convictions such as appellant appeals from here,

appellant's motion is denied.

_____
Judge, Circuit Court

Dated:

SHEET NO. _____

LINE NO. _____

No. 69 MC 605359
69 MC 605358

CITY OF CHICAGO

v.

JACK MAYER, DEFENDANT

ORDER OF Oct. 2nd 1970
Date

Court finds that the defendant is an indigent person on the basis of his affidavit and hearing.

nunc pro tunc

/s/ Charles P. Horan
Judge

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS,
MUNICIPAL DIVISION

Nos. 69 MC 605358
69 MC 605359

[Filed Oct. 20, 1970]

JACK L. MAYER, APPELLANT

v.

THE CITY OF CHICAGO, APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Appellant Jack L. Mayer hereby appeals to the Supreme Court of the United

States from the final judgment order of the Illinois Supreme Court entered September 18, 1970 denying Appellant a transcript of the trial proceedings against him.

This appeal is taken pursuant to 28 U.S.C. § 1257(2). The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaints against Appellant Jack L. Mayer,
2. Judgment order entered January 14, 1970.
3. Post-trial Motion by Jack L. Mayer.
4. Motion for leave to proceed as a poor person filed in the Circuit Court of Cook County on February 3, 1970.
5. Circuit Court Judge Charles Horan's order entered upon the motion filed February 3, 1970, and half-sheet entry of the same date.
6. Notice of Appeal filed in the Circuit Court of Cook County on February 25, 1970. Also this Notice of Appeal.
7. Motion for leave to appeal as a poor person filed in the Supreme Court of Illinois on March 24, 1970.
8. Order of the Supreme Court of Illinois denying Appellant's Motion for leave to appeal as a poor person entered September 18, 1970.
9. Order of Circuit Court Judge Charles Horan entered upon Appellant's Motion to Complete the Record, October 2, 1970.

Items 1-6 and Item 9 are physically in the custody of the Circuit Court of Cook County, Mrs. Edna Witkowski, Room 602, Civic Center, preparatory to transmission to the Clerk of the Illinois Supreme Court. Items 7 and 8 are with the Clerk of the Illinois Supreme Court. Because this record is in the possession of both the Clerk of the Circuit Court and the Clerk of the Supreme Court, this Notice of Appeal is being filed in both courts. Please prepare, certify and transmit the portions of the record designated which are within your power to transmit.

The following question is presented by this Appeal:

Does Rule 607(b) of the Supreme Court of Illinois, prohibiting the provision of trial transcripts at State expense to indigents seeking review of convictions for offenses other than felonies, create an invidious classification among citizens on the basis of wealth in violation of the Fourteenth Amendment to the United States Constitution?

/s/ Henry F. Field
HENRY F. FIELD
Attorney for Appellant

OF COUNSEL:

Mayer, Brown & Platt
231 South La Salle Street
Chicago, Illinois 60604
STate 2-0600

PROOF OF SERVICE

This is to certify that I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the City of Chicago, by mailing same to Mr. Edmund Hatfield, Corporation Counsel, 511 City Hall, Chicago, Illinois 60602, on October 20, 1970.

/s/ Henry F. Field

SUBSCRIBED AND SWORN TO
before me this 20th day
of October, 1970.

/s/ Eleanor A. Alekna
Notary Public

CERTIFICATE OF COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, MATTHEW J. DANAHER, Clerk of the Circuit Court of Cook County, Illinois and the keeper of the records and files thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of certain proceedings made and entered of record in said Court; also of a certain COMPLAINT attached to File No. 69 MC1 605358; also of a certain JUDGE'S MEMORANDUM dated FEBRUARY 3, 1970; also of a certain MOTION FOR LEAVE TO PROCEED AS A POOR PERSON filed on FEBRUARY 18, 1970; also of a certain JUDGE'S MEMORANDUM dated FEBRUARY 24, 1970; also of a certain NOTICE OF APPEAL filed on FEBRUARY 26, 1970; also of a certain ORDER filed on OCTOBER 2, 1970; also of a certain JUDGE'S MEMORANDUM dated OCTOBER 2, 1970; also of a certain NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES AND PROOF OF SERVICE filed on the 20th day of OCTOBER, A.D. 1970; the originals of which are on file in my office, in a certain cause lately pending in said Court, on the law side thereof, between CITY OF CHICAGO, a Municipal Corporation, Plaintiff, and JACK L. MAYER, Defendant, IN WITNESS WHEREOF. I have hereunto set my hand and affixed the Seal of said Court, at Chicago, aforesaid APRIL 30, 1971.

/s/ Matthew J. Danaher
Clerk

[SEAL]

CERTIFICATE OF COPY

STATE OF ILLINOIS)
) ss.
County of Cook)

I, MATTHEW J. DANAHER, Clerk of the Circuit Court of Cook County, Illinois and the keeper of the records and files thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of certain proceedings made and entered of record in said Court, also of a certain Complaint attached to file No. 69 MC1 605359; the original of which is in my possession, also of a certain Order and Post-Trial Motion filed on the 30th day of JANUARY, A.D. 1970; the originals of which are on file in my office, in a certain cause lately pending in said Court, on the law side thereof, between THE CITY OF CHICAGO, a municipal corporation, plaintiff, and JACK L. MAYER, defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, aforesaid, APRIL 30, 1971.

/s/ Matthew J. Danaher
Clerk

[SEAL]

THE UNITED STATES OF AMERICA

IN THE CITY OF CHICAGO
COUNTY OF COOK, STATE OF ILLINOIS

STATE OF ILLINOIS)
) SS.
County of Cook)

I, EUGENE L. WACHOWSKI Presiding Judge of The Circuit Court of Cook County, Illinois, do hereby certify that MATTHEW J. DANAHER, whose name is subscribed to the foregoing Certificate of Attestation, now is, and was, at the time of signing and sealing the same, the CLERK of The Circuit Court of Cook County, Illinois, and keeper of the Seal and the records thereof, duly elected, commissioned and qualified; that full faith and credit, are, and of right ought to be given to all his official acts as such, in all Courts of Record in the United States and elsewhere, and that the attestation is in due form of law and by the proper officer.

Given under my hand at my Chambers in Chicago, Illinois, this 30th day of April, A.D., 1971.

/s/ Eugene L. Wachowski, (SEAL)
Presiding Judge of The Circuit
Court of Cook County,
Illinois

THE UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
County of Cook)

I, MATTHEW J. DANAHER, Clerk of The Circuit Court of Cook County, Illinois, do hereby certify that HONORABLE EUGENE L. WACHOWSKI, whose name is subscribed to the foregoing Certificate of Attestation, now is, and was, at the time of the signing thereof, Presiding Judge of The Circuit Court of Cook County, Illinois, duly elected, commissioned and qualified, and that his said signature is genuine.

In Witness Whereof, I have signed my name and affixed the Seal of The Circuit Court of Cook County, Illinois, April 30, 1971.

/s/ Matthew J. Danaher
Clerk of The Circuit Court
of Cook County, Illinois

(SEAL)

THE UNITED STATES OF AMERICA

IN THE CITY OF CHICAGO
COUNTY OF COOK, STATE OF ILLINOIS

STATE OF ILLINOIS)
) SS.
County of Cook)

I, HON. EUGENE L. WACHOWSKI, Presiding Judge of The Circuit Court of Cook County, Illinois, do hereby certify that MATTHEW J. DANAHER, whose name is subscribed to the foregoing Certificate of Attestation, now is, and was, at the time of signing and sealing the same, the CLERK of The Circuit Court of Cook County, Illinois, and keeper of the Seal and the records thereof, duly elected, commissioned and qualified; that full faith and credit, are, and of right ought to be given to all his official acts as such, in all Courts of Record in the United States and elsewhere, and that the attestation is in due form of law and by the proper officer.

Given under my hand at my Chambers in Chicago, Illinois, April 30, 1971.

/s/ Eugene L. Wachowski, (SEAL)
Presiding Judge of The Circuit
Court of Cook County,
Illinois

THE UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
County of Cook)

I, MATTHEW J. DANAHER, Clerk of The Circuit Court of Cook County, Illinois, do hereby certify that HONORABLE EUGENE L. WACHOWSKI, whose name is subscribed to the foregoing Certificate of Attestation, now is, and was, at the time of the signing thereof, Presiding Judge of The Circuit Court of Cook County, Illinois, duly elected, commissioned and qualified, and that his said signature is genuine.

In Witness Whereof, I have signed my name and affixed the Seal of The Circuit Court of Cook County, Illinois, April 21, 1971.

/s/ Matthew J. Danaher
Clerk of The Circuit Court
of Cook County, Illinois

(SEAL)

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of September in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

Present: ROBERT C. UNDERWOOD, *Chief Justice;* JUSTICE WALTER V. SCHAEFER, JUSTICE THOMAS E. KLUCZYNSKI, JUSTICE DANIEL P. WARD, JUSTICE JOHN T. CULBERTSON, JR., JUSTICE CASWELL J. CREBS, JUSTICE MARVIN F. BURT

WILLIAM J. SCOTT, *Attorney General*
ROBERT G. MIDEY, *Marshal*
Attest: JUSTIN TAFT, *Clerk*

BE IT REMEMBERED, that, to-wit: on the 18th day of September, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 43044

JACK L. MAYER, APPELLANT

vs.

THE CITY OF CHICAGO, APPELLEE

APPEAL FROM CIRCUIT COURT, COOK COUNTY

And now, on this day, the Court having duly considered the motion by appellant that he be furnished a transcript of proceedings without cost, for waiver of filing fees, and for appointment of counsel, and being fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the portion of the motion by appellant that he be furnished a transcript of proceedings without cost and for appointment of counsel be, and the same is, denied and the part of the motion for waiver of filing fees be, and the same is, allowed.

SUPREME COURT OF THE UNITED STATES

No. 6061, OCTOBER TERM, 1970

JACK L. MAYER, APPELLANT

v.

CITY OF CHICAGO

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

February 22, 1971

SUPREME COURT OF THE UNITED STATES

No. 6061, OCTOBER TERM, 1970

JACK L. MAYER, APPELLANT

v.

CITY OF CHICAGO

APPEAL from the Supreme Court of the State of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 22, 1971

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 424660 639